

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GYPSUM RESOURCES, LLC, a Nevada  
limited liability company,

Plaintiff,

vs.

CLARK COUNTY, *et al.*,

Defendants.

Case No.: 2:19-cv-00850-GMN-EJY

**ORDER**

CLARK COUNTY, *et al.*,

Counter-Claimants,

vs.

GYPSUM RESOURCES, LLC, a Nevada  
limited liability company,

Counter-Defendant.

Pending before the Court is Motion for Attorneys’ Fees and Non-Taxable Costs, (ECF No. 137), filed by Defendant and Counter-Claimants Clark and Clark County Board of Commissioners (collectively, “Clark County”). Plaintiff and Counter-Defendant Gypsum Resources, LLC’s (“Gypsum”) filed a Response, (ECF No. 141), to which Clark County filed a Reply, (ECF No. 144).

For the reasons discussed below, the Court **STAYS AND HOLDS IN ABEYANCE** Clark County’s Motion for Attorneys’ Fees and Non-Taxable Costs.

The Court incorporates the background and procedural of this case from its Order granting Clark County’s Motion for Summary Judgment. (Order 2:10–15:18, ECF No. 134).

1 Following the Court's Order, Clark County filed the instant Motion for Attorneys' Fees and  
 2 Non-Taxable Costs, (ECF No. 137), requesting an award of \$996,662.40. Shortly thereafter,  
 3 Gypsum timely filed a Notice of Appeal,<sup>1</sup> (ECF No. 138), notifying the Court of its appeal to  
 4 the Ninth Circuit from the Court's entry of summary judgment. (Not. Appeal, ECF No. 138).

5 Although an appeal from the merits of a final judgment does not foreclose a district  
 6 court from awarding attorney's fees, the district court may, in its discretion, "rule on the claim  
 7 for fees, [ ] defer its ruling on the motion, or [ ] deny the motion without prejudice, directing  
 8 under subdivision (d)(2)(B) a new period for filing after the appeal has been resolved." Fed. R.  
 9 Civ. P. 54(d) advisory committee's note to 1993 amendment; *see also Masalosalo v. Stonewall*  
 10 *Ins. Co.*, 718 F.2d 955, 956 (9th Cir. 1983); *citing White v. New Hampshire Dep't of Emp't*

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 12 <sup>1</sup> Gypsum's Notice of Appeal stated the Court's Order granting summary judgment "failed to address or  
 13 adjudicate [ ] Clark County's counterclaim against Gypsum." (Not. Appeal 2:1–6). Gypsum further observed  
 14 that under Fed. R. Civ. P. 54(b), a court "may direct entry of a final judgment as to one or more, but fewer than  
 15 all claims or parties only if the court expressly determines that there is no just reason for delay" which Gypsum  
 16 contends did not occur here. (*Id.*). On October 22, 2019, the Magistrate Judge issued a Report and  
 17 Recommendation ("R&R"), recommending this case be referred to the United States Bankruptcy Court for the  
 18 District of Nevada, and denying Gypsum's request the Court take judicial notice of all pleadings filed in the  
 19 Bankruptcy Court. (R&R, ECF No. 27). The undersigned later adopted the Magistrate Judge's recommendation  
 20 referring this case to Bankruptcy Court and denying Gypsum's request for judicial notice of pleadings filed in  
 21 Bankruptcy Court. (Order Adopting R&R, ECF No. 28). Clark County subsequently filed state law  
 22 counterclaims, but only in the *bankruptcy proceeding*. (*See* Counterclaim, ECF No. 93 in *Gypsum Resources,*  
 23 *LLC v. Clark County et al.*, 19-01105-mkn (Bankr. D. Nev.). The Court has reviewed the docket, and neither  
 24 Clark County nor Gypsum ever filed Clark County's counterclaims in the docket *before this Court*. In fact, the  
 25 Court specifically denied Plaintiff's request for the Court to take judicial notice of the bankruptcy proceeding.  
 (Order Adopting R&R). Thus, it does not appear Clark County's counterclaims were ever properly before this  
 Court.

Even if they were, Clark County's counterclaims consisted of state law claims for breach of contract and breach  
 of the implied covenant and fair dealing. (*See* Counterclaims, ECF No. 93 in *Gypsum Resources, LLC v. Clark*  
*County et al.*, 19-01105-mkn (Bankr. D. Nev.). These counterclaims were based on the same facts and presented  
 the same issues as Gypsum's claim for breach of contract and breach of the implied covenant and fair dealing. In  
 granting Clark County's Motion for Summary Judgment on Gypsum's federal causes of action, the Court  
 declined exercising supplemental jurisdiction over Gypsum's state-law claims, including its breach of contract  
 and breach of the implied covenant and fair dealing claims, based on juridical concerns such as economy,  
 fairness, and convenience. (Order 33:3–35:11). Thus, it is unclear why there would be "no just reason" for  
 delaying entry of judgment on issues arising from the same conduct and predicated on the same facts.  
 Nevertheless, to conserve judicial resources and minimize future litigation, the Court would welcome the  
 opportunity to revisit its Order granting summary judgment to address this issue if the parties choose to file a  
 motion for reconsideration.

1 *Sec.*, 455 U.S. 445 (1982) (holding that district court retains jurisdiction to rule on attorney’s  
2 fees motions), *superseded on other grounds by rule*, Fed. R. Civ. P. 54 advisory committee’s  
3 note to 1993 amendment); *see also* Fed. R. Civ. P. 58 advisory committee’s note to 1993  
4 amendment (“Particularly if the claim for fees involves substantial issues or is likely to be  
5 affected by the appellate decision, the district court may prefer to defer consideration of the  
6 claim for fees until after the appeal is resolved.”). District courts within the Ninth Circuit have  
7 held the reasoning of the advisory committee’s notes to the 1993 Amendment to Fed. R. Civ. P.  
8 54 is “applicable to a ruling on a bill of costs.” *Lasic v. Moreno*, No. 2:05–cv–0161, 2007 WL  
9 4180655, at \*1 (E.D. Cal. Nov. 21, 2007); *see also In re: Fresh & Process Potatoes Antitrust*  
10 *Litig.*, No. 4:10–cv–2186–, 2016 WL 3919830, at \*2 (D. Idaho July 18, 2016) (“[O]ther district  
11 courts within the Ninth Circuit have routinely applied this committee note to both claims for  
12 fees and claims for costs.”); *Tranxition, Inc. v. Novell, Inc.*, No. 3:12–cv–01404, 2015 WL  
13 7195337, at \*1 (D. Or. Nov. 16, 2015) (“The Advisory Committee Notes to Rule 54(d) give the  
14 trial court the discretion to defer an award of fees pending an appeal, and district courts have  
15 inferred from that Note the authority to defer an award of costs in the same manner.”).

16 “Given the complex facts of the case, the complexity of the final judgment, and,  
17 presumably, the complexity of the appeal, the Court finds it most prudent to defer ruling” on  
18 Clark County’s Motion for Attorneys’ Fees and Non-Taxable Costs “until the appeal is  
19 resolved.” *G.P.P., Inc. v. Guardian Protection Products, Inc.*, No. 1:15-cv-00321, 2018 WL  
20 932087, at \*2 (E.D. Cal. Feb. 16, 2018). To make such a determination now would not only be  
21 premature, but would risk wasting the Court’s judicial resources, particularly given the amounts  
22 requested by Clark County and the volume of briefing by the parties. *See Reading Int’l, Inc. v.*  
23 *Malulani Grp., Ltd.*, No. 13-cv-00133, 2014 WL 12772247, at \*2 (D. Haw. Sept. 25, 2014  
24 (staying motion for attorney’s fees in the interest of judicial economy where the amount of  
25 money at stake was “substantial” and “the request and related briefing are voluminous” and

1 would “involve the painstaking review of somewhere between 74 and 101 pages of  
2 timesheets.” ); *In re Farmers Ins. Exchange Claims Representative Overtime Pay Litig.*, MDL  
3 No. 33–1439(A), 2009 WL 3834034, at \*3 (D. Or. Nov. 13, 2009) (deferring, “in the interests  
4 of judicial efficiency,” consideration of attorney’s fees motion until issuance of mandate from  
5 Ninth Circuit and observing that “the issues on appeal and cross-appeal in this case . . . carry a  
6 significant potential that the Ninth Circuit’s disposition may greatly affect my consideration of  
7 plaintiffs’ motions for attorney fees and costs.”); *Lasic*, 2007 WL 4180655, at \*1 (deferring  
8 ruling on motion for bill of costs pending outcome of appeal because, “in the interests of  
9 judicial economy . . . it would be a[n] inefficient use of judicial resources to rule on the Bill of  
10 Costs at this time, and then to later re-evaluate the issue after the appeal is completed”).

11 Accordingly,

12 **IT IS HEREBY ORDERED** that Clark County’s Motion for Attorneys’ Fees and Non-  
13 Taxable Cost, (ECF No. 137), is **STAYED AND HELD IN ABEYANCE** pending the  
14 resolution of Gypsum’s appeal before the Ninth Circuit. For administrative purposes, the  
15 Motion shall be **TERMINATED**, but it may be reactivated at Clark County’s request once the  
16 Ninth Circuit has issued its decision.

17 **DATED** this 3 day of October, 2023.

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Gloria M. Navarro, District Judge  
UNITED STATES DISTRICT COURT